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BEFORE THE ARIZONA POWER PLANT
AND TRANSMISSION LINE SITING COMMITTEE

2003 SEP 22 A 11: 07

AZ CORP COMMISSION
DOCUMENT CONTROL

CASE NO. 122

DOCKET NO. L-00000D-03-0122

**STAFF'S BRIEF IN SUPPORT OF
SITING COMMITTEE'S
AUTHORITY TO DETERMINE SITE
SUITABILITY
and
COMMISSION'S AUTHORITY TO
GRANT A CERTIFICATE WITH
CONDITIONS**

Arizona Corporation Commission

DOCKETED

SEP 22 2003

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IN THE MATTER OF THE APPLICATION OF
ARIZONA PUBLIC SERVICE COMPANY IN
CONFORMANCE WITH THE REQUIREMENTS
OF ARIZONA REVISED STATUTES SECTION 4-
360, ET SEQ., FOR A CERTIFICATE OF
ENVIORNMENTAL COMPATIBILITY
AUTHORIZING THE WEST VALLEY-SOUTH
230kV TRANSMISSION LINE PROJECT,
INCLUDING THE CONSTRUCTION OF
APPROXIMATELY 18 MILES OF 230kV
TRANSMISSION LINES AND THREE 230kV
SUBSTATIONS IN MARICOPA COUNTY,
ARIZONA, ORIGINATING SOUTH OF
BROADWAY ROAD AT AN EXISTING 230kV
TRANSMISSION LINE IN SECTION 28,
TOWNSHIP 1 NORTH, RANGE 2 WEST,
G&SRB&M THAT WILL INTERCONNECT WITH
THE PROPOSED TS4 SUBSTATION IN SECTION
19, TOWNSHIP 1 NORTH, RANGE 2 WEST AND
CONTINUING TO THE PROPOSED TS3
SUBSTATION IN SECTION 22, TOWNSHIP 2
NORTH, RANGE 2 WEST, G&SRB&M AND
TERMINATING AT THE PROPOSED 3 NORTH,
RANGE 2 WEST, G&SRB&M.

I. INTRODUCTION.

This brief addresses (1) the Siting Committee's statutory authority to consider the suitability of sites for an Applicant's project, and (2) the Commission's authority to grant a Certificate of Environmental Compatibility (Certificate) with conditions, including an alternative site condition determined by the Siting Committee.

Each proposed project for an electric generation plant or transmission line has the potential to significantly impact the environment. To deal with the environmental impact issues and to balance those issues with the need for electric service, the Arizona Legislature enacted the Power Plant and Transmission Line Siting Committee statutes, A.R.S. §§ 40-360 through 360.13, in 1971. The siting statutes provide a single forum to deal with all of the issues in an efficient manner, and to provide for notice and opportunity for all concerned parties to participate. *See* Ariz. Laws 1971, Ch. 67, § 2. Since enactment, the process has been conducted under the auspices of the Commission, which

1 makes the ultimate determination on whether to approve or deny an application for a Certificate.

2 The purpose of the siting process is to give the Commission evidence on the record to
3 perform the public interest balancing between the environmental impact and the need for the power
4 from a particular project. Because each proposed project is unique, there are no bright line standards
5 that can be applied to every application. Each project is examined individually and on its own merits,
6 and no decision on a project can be pre-determined. This is because the specific location and design
7 of a proposed project have unique impacts on the environmental factors listed in A.R.S. § 40-360.06.

8 The location of a proposed project may make certain projects environmentally incompatible such
9 that no condition(s) will minimize the impact sufficiently to tip the public interest in favor of
10 granting a Certificate.

11 **II. STATUTORY AUTHORITY EXPRESSLY PROVIDES THAT THE SITING**
12 **COMMITTEE MAY DENY AN APPLICATION BASED UPON THE STATUTORY**
13 **FACTORS IT CONSIDERS IN DETERMINING THE SUITABILITY OF A SITE**
14 **FOR A PLANT OR TRANSMISSION LINE.**

15 The siting process includes an evidentiary hearing before the Siting Committee. The Siting
16 Committee evaluates the proposed project in light of the environmental factors identified in A.R.S. §
17 40-360.06 and makes its decision on the application, and may impose conditions on its approval of
18 an application. The Commission then considers the Siting Committee decision and determines
19 whether to grant or deny a Certificate to the Applicant under A.R.S. § 40-360.07.

20 A.R.S. § 40-360-06.A states:

21 A. The committee may approve or deny an application and may impose
22 reasonable conditions upon the issuance of a certificate of environmental
23 compatibility and in so doing shall consider the following factors as a basis
24 for its action with respect to the suitability of either plant or transmission line
25 siting plans:

26 1. Existing plans of the state, local government and private entities for
27 other developments at or in the vicinity of the proposed site.

28 2. Fish, wildlife and plant life and associated forms of life upon which
they are dependent.

3. Noise emission levels and interference with communication signals.

4. The proposed availability of the site to the public for recreational
purposes, consistent with safety considerations and regulations.

1 5. Existing scenic areas, historic sites and structures or archaeological
2 sites at or in the vicinity of the proposed site.

3 6. The total environment of the area.

4 7. The technical practicability of achieving a proposed objective and the
5 previous experience with equipment and methods available for achieving a
6 proposed objective.

7 8. The estimated cost of the facilities and site as proposed by the
8 applicant and the estimated cost of the facilities and site as recommended by
9 the committee, recognizing that any significant increase in costs represents a
10 potential increase in the cost of electric energy to the customers or the
11 applicant.

12 9. Any additional factors which require consideration under applicable
13 federal and state laws pertaining to any such site.

14 Under this statute, the Siting Committee considers the factors identified. If the Siting
15 Committee finds the Applicant's proposed sites are not suitable in light of these factors, it may
16 simply deny the application.

17 However, A.R.S. § 40-360.04 provides the Siting Committee a discretionary alternative to
18 denial of an application because none of the Applicant's proposed sites are suitable based upon the
19 A.R.S. § 40-360.06.A factors.

20 **III. STATUTORY AUTHORITY EXPRESSLY PROVIDES THAT THE SITING**
21 **COMMITTEE MAY CONDITION APPROVAL OF AN APPLICATION ON THE**
22 **USE OF A SITE OTHER THAN A SITE PROPOSED BY THE APPLICANT.**

23 A.R.S. § 40-360.04.A states:

24 A. The chairman of the committee shall, within ten days after receiving an
25 application, provide public notice as to the time and place of a hearing on the
26 application and provide notice by certified mail to the affected areas of
27 jurisdiction at least twenty days prior to a scheduled hearing. If the
28 committee subsequently proposes to condition the certificate on the use of a
site other than the site or alternative sites generally described in the notice
and considered at the hearing, a further hearing shall be held thereon after
public notice. The hearing or hearings shall be held not less than thirty days
nor more than sixty days after the date notice is first given and shall be held
in the general area within which the proposed plant or transmission line is to
be located or at the State Capitol at Phoenix as determined by the chairman,
at his discretion.

(emphasis added).

This statutory language is clear and needs no interpretation. State v. Christian, 255 Ariz. 64,
66 P.2d 1241 (2003); Arizona Department of Revenue v. Arizona Public Service Co., 188 Ariz. 232,

1 934 P.2d 796 (1997). Under the plain meaning of the statute and contrary to Mr. Meek's September
2 16, 2003 letter, the Siting Committee has the authority and discretion to condition its approval of an
3 Application on a site other than one that has been proposed by the Applicant.

4 Mr. Meek refers to Consolidated Stage v. Corporation Commission, et al, 66 Ariz. 75, 182
5 P.2d 937 (1947) to support his position, but Consolidated Stage is apparently mistakenly cited by Mr.
6 Meek. Consolidated Stage as cited holds that the time for appeal cannot be extended by the Arizona
7 Supreme Court. The case does not appear in any way related to Mr. Meek's argument. But even
8 assuming there is another case that supports Mr. Meek's position that the Commission cannot dictate
9 to a public service corporation how to deploy its assets, that position has no relevance to the siting
10 statutory scheme that addresses the siting of utility facilities under the State of Arizona's police
11 power.

12 The siting statutes apply to "utilities," not "public service corporations." For purposes of the
13 statutory siting scheme, "utility" means any person engaged in the generation or transmission of
14 electric energy, and clearly includes the Applicant in this case. See A.R.S. § 40-360.11. Neither Mr.
15 Meek's mistakenly cited argument nor his reference to Arizona Constitution, Art. 15, Section 7
16 precludes the legislature from enacting Arizona's statutory siting scheme, A.R.S. § 4-360, et seq. A
17 public service corporation's right to construct and operate transmission lines does not mean that the
18 State cannot require siting approval before construction and operation of transmission lines.

19 **IV. THE BURDEN OF SUPPORTING AN APPLICATION FOR A CERTIFICATE TO**
20 **CONSTRUCT A PLANT OR TRANSMISSION LINE IS ON THE APPLICANT.**

21 A.R.S. 40-360.03 requires an Applicant to file information in support of its application to
22 construct plant or transmission facilities. As discussed above, A.R.S. § 40-360.04.A expressly
23 provides that a condition on the Certificate may require the use of a site other than proposed by the
24 Applicant. Nothing in these statutes alters the responsibility or burden for an Applicant to support its
25 application for authority to construct its plant or transmission line, whether or not the Siting
26 Committee chooses to hold hearings on a site other than one proposed by the Applicant. Moreover,
27 an Applicant is not without alternatives if it is dissatisfied with either a Siting Committee or
28 Commission condition. An Applicant may choose not to construct rather than comply. Or, it may

1 seek administrative and judicial review.

2 **V. APPLICANT HAS ADMINISTRATIVE AND JUDICIAL REVIEW REMEDIES, IF**
3 **IT WISHES TO PROTEST A CONDITION PLACED UPON APPROVAL OF ITS**
4 **APPLICATION.**

5 Applicant has administrative review avenues, if it is dissatisfied with either the Siting
6 Committee's determinations or the Commission's order granting, modifying or denying the
7 certificate issued by the Committee. Applicant is required to exhaust these administrative remedies,
8 if it seeks to set aside a decision by the Siting Committee, and ultimately the Commission.

9 A.R.S. § 40-360.07 provides a statutory review procedure for an Applicant as well as other
10 parties, to seek Commission review of a Siting Committee decision, which includes any conditions
11 placed upon approval of the application.

12 A.R.S. § 40-360.07.A states:

13 A. No utility may construct a plant or transmission line within this state until it
14 has received a certificate of environmental compatibility from the committee
15 with respect to the proposed site, affirmed and approved by an order of the
16 commission which shall be issued not less than thirty days nor more than
17 sixty days after the certificate is issued by the committee, except that within
18 fifteen days after the committee has rendered its written decision any party to
19 a certification proceeding may request a review of the committee's decision
20 by the commission.

21 (emphasis added).

22 An Applicant may also seek Commission reconsideration of the Commission's order.
23 Subsequently, if an Applicant has exhausted its administrative remedies, it may seek judicial review.

24 A.R.S. § 40-360.07.C states:

25 C. The committee or any party to a decision by the commission pursuant to
26 subsection B of this section may request the commission to reconsider its
27 decision within thirty days after the decision is issued. A request for
28 reconsideration made pursuant to this subsection shall set forth the grounds
upon which it is based and state the manner in which the party believes the
commission unreasonably or unlawfully applied or failed to apply the criteria
set forth in § 40-360.06. The decision of the commission is final with respect
to all issues, subject only to judicial review as provided by law in the event of
an appeal by a person having a legal right or interest that will be injuriously
affected by the decision.

(emphasis added).

Thus, an Applicant may seek reconsideration by the Commission and ultimately judicial

1 review of an order granting a certificate upon certain conditions, including a condition based upon a
2 site other than one proposed by the Applicant.

3 **VI. CONCLUSION.**

4 The relevant statutes are clear. The Siting Committee may lawfully condition its approval of
5 an application upon a construction site other than proposed by the Applicant, and the Commission
6 may so order, if A.R.S. § 40-360.06 factors and the public interest compel such a result.

7 RESPECTFULLY SUBMITTED this 22nd day of September, 2003.

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10 David M. Ronald
11 Janice Alward
12 Legal Division
13 Arizona Corporation Commission
14 1200 West Washington Street
15 Phoenix, Arizona 85007
16 (602) 542-3402
17
18
19
20
21
22
23
24
25
26
27
28

1 Original and twenty-five (25)
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22nd day of September, 2003 with:

3 Docket Control
4 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

5
6 Copies of the foregoing
7 mailed this 22nd day of
September, 2003 to:

8 Laurie A. Woodall, Chairman
9 Arizona Power Plant & Transmission
Line Siting Committee
10 1275 West Washington
Phoenix, AZ 85007

11 Thomas H. Campbell
12 Lewis and Roca LLP
40 North Central Avenue
13 Phoenix, AZ 85004

14 C. David Martinez
Pinnacle West Capital Corp.
15 Law Department
Mail Station: 8695
16 P. O. Box 53999
Phoenix, AZ 85072

17 Roger K. Ferland
18 Laura Raffaelli
Quarles & Brady Streich Lang, LLP
19 One Renaissance Square
Two North Central
20 Phoenix, AZ 85004

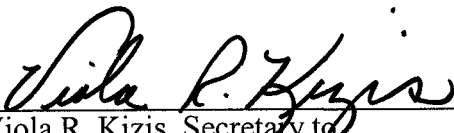
Jordan Rich Rose
Jorden, Bischoff, McGuire & Rose
7272 E. Indian School Road, #205
Scottsdale, AZ 85251

Karrin Kunasek Taylor
Biskind, Hunt & Taylor, PLC
11201 North Tatum Blvd., Suite 330
Phoenix, AZ 85028

Walter W. Meek
Arizona Utility Investors Association
2100 North Central, Suite 210
Phoenix, AZ 85004

Lynne Lagarde
Earl, Curly & Lagarde, PC
3101 North Central, Suite 1000
Phoenix, AZ 85012

Alicia M. Corbett
Michael King
Gammage & Burnham PLC
Two North Central, 18th Floor
Phoenix, AZ 85004

21
22
23 
24 Viola R. Kizis, Secretary to
David M. Ronald